HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4395 OF 2005
Date of decision : 5.3.2007

Smt.Maya Devi .....Appellant

versus

Hari Ram and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Mani Ram Verma, Advocate for the appellant.
Mr.R.A.Sheoran, Advocate for respondent No.1.

* * *

ORDER

HEMANT GUPTA, J.

The challenge in the present second appeal is to the preliminary decree passed by the Courts below, whereby mode of partition suggested by the Local Commissioner in his report dated 16.7.2004 was accepted.

Learned counsel for the appellant has vehemently argued that the ex-parte preliminary decree was passed against the appellant. Such decree could not be passed as the counsel for the appellant had no instructions and, therefore, the Court should have issued notice to the appellant.

Apart from the said fact, the pleading of no instruction by the counsel is not a ground which requires a notice to be issued to the appellant. In view of the judgment of this Court in ***"Balbir Dewan Cold Storage and General Mills versus Naveen Chander, 1989 (1) PLR-677",*** I am of the opinion that such grievance cannot be permitted to be raised

by the appellant in the proceedings of the final decree. Once the proceedings of the final decree has attained finality, the appellant cannot be permitted to raise a plea of non service of notice for the preliminary decree.

In respect of the final decree, the sole argument of the appellant is that opportunity has not been given to the appellant to raise objections to the report of the Local Commissioner. Learned counsel for the appellant could not produce any provision which contemplates to submit objections to the report of the Local Commissioner. In fact, Division Bench of this Court in *Balbir Dewan's case (supra)* has considered the said question, wherein it has been held that the objections to the report of the Local Commissioner are not contemplated under the provisions of Order 26 Rule 10 of the Civil Procedure Code.

In view of the above, I do not find any illegality or irregularity or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

March 5, 2007
**mohinder*